



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 10, 1998

Ms. Janet Dill
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
Municipal Building
Dallas, Texas 75201

OR98-1649

Dear Ms. Dill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116488.

The City of Dallas (the "city") received a request for the following information:

1. Copies of all Dallas Water Utility Department quality assurance/quality control, chain of custody and all other sampling and analytical documents relating to any sampling events which were the basis for wastewater violation citations or which were used to calculate sewer BOD, TSS or any other surcharges on wastewater discharges at the Mesa Dallas Facility, for such sampling on or after January 1, 1997;
2. Copies of any quality assurance/quality control, chain of custody and all other sampling and analytical documents relating to any sampling events, performed by persons other than those covered by request item 1 above, which were the basis for wastewater violation citations or which were used to calculate sewer BOD, TSS or any other surcharges on wastewater discharges at the Mesa Dallas Facility, for such sampling on or after January 1, 1997;
3. Copies of any Dallas Water Utility Department procedures or manuals for taking, handling, analyzing or storing BOD or TSS and associated seed, blank or other control samples, as in effect on January 1, 1997, and also as amended at any time thereafter;

4. Copies of procedures or manuals for taking, handling, analyzing or storing BOD or TSS and associated seed, blank or other control samples, as in effect on January 1, 1997, and as amended at any time thereafter, maintained by any person not covered by request item 3 above, who took, handled, stored, or analyzed BOD or TSS samples from Mesa's Dallas facility.

You indicate that you will release all the requested surcharge information sought in request items 1 and 2. You claim, however, that the remaining responsive information to request items 1 and 2, and the manuals and standard operating procedures requested in items 3 and 4 are excepted from required public disclosure by section 552.108 of the Government Code. You have submitted a representative sample of the requested documents.¹

You explain that the requested information contains two types of information. First is the information responsive to items 1 and 2, submitted as Exhibit 2, which you state is held by the attorney who is prosecuting several criminal complaints in Dallas Municipal Court. Second are the Dallas Water Utility Department's (the "department") standard operating procedure manuals for taking, handling, analyzing, or storing biochemical oxygen demand or total suspended solids sample information, submitted as Exhibits 4 and 5. We will examine your arguments under section 552.108 for Exhibit 2 first.

Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

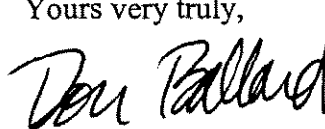
You explain that the requested information in Exhibit 2 concerns ten criminal complaints pending in Dallas Municipal Court which relate to an illegal waste discharge. You have provided this office with a copy of the complaints associated with the pending cases. You state that the information "produced ... in connection with criminal activity qualifies as the type of information held by a law enforcement agency and prosecutor that deals with the investigation of a crime." You indicate that the city attorney's office will prosecute the pending criminal complaints. After reviewing the submitted materials, we

believe that you have shown that the release of the requested information would interfere with the prosecution of crime. Thus, we conclude that the requested information submitted as Exhibit 2 may be withheld under section 552.108(a)(1). See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); see Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

You additionally argue that the department's standard operating procedure manuals for taking, handling, analyzing, or storing biochemical oxygen demand or total suspended solids sample information, Exhibits 4 and 5, may be withheld under section 552.108. It appears that the requested manuals are maintained by the department. The department is not a "law enforcement agency" for the purposes of section 552.108. Attorney General Opinion MW-575 (1982) (Texas Department of Agriculture not a law enforcement agency because its function is essentially regulatory); Open Records Decision Nos. 493 (1988) (Board of Pharmacy), 199 (1978) (regulatory agencies generally not law enforcement agencies), 85 (1975) (municipal fire department). Consequently, you may not withhold the requested manuals submitted as Exhibits 4 and 5 under section 552.108. The requested standard operating procedure manuals must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

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Enclosures: Submitted documents

cc: Mr. Patrick McLaughlin
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(w/o enclosures)